

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5330 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

- =====
1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy : YES
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ARVINDKUMAR N BHATT

Versus

POLICE COMMISSIONER OF AHMEDABAD

Appearance:

MR JB PARDIWALA for Petitioner
MR PC KAVINA for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/08/2000

ORAL JUDGEMENT

Learned advocate Mr. J. B. Pardiwala has appeared for the petitioner. Though notice of rule has been served upon the respondents, none has appeared for the respondents. It is also necessary to be mentioned

here that at the time of issuing rule on 22nd November, 1991, this Court (Coram : R. K. Abichandani,J.) has passed an order to the effect that the matter be listed for final hearing in February, 1992 and in the mean time, it will be open to the respondents to consider the matter to give compassionate appointment to the petitioner. Mr. Pardiwala has submitted that inspite of the said order passed by this Court on 22nd November, 1991, the case of the petitioner has not been considered so far by the respondents for giving compassionate appointment to the petitioner. Brief facts of the present petition are as under:

Father of the petitioner, Mr. Natvarlal Muljibhai Bhatt was serving as police constable in the office of the Anti Corruption Bureau. He joined the service in the year 1951 and served upto 1969. In the year 1969, on 10th April, 1969, father of the petitioner expired in the civil hospital as he was suffering from cancer. The death certificate has been produced at Annexure "A" to the petition. At the time of death of the father of the petitioner, he left behind him widowed wife and two sons one of whom is the petitioner before this court. At the time of death of the father of the petitioner, both the brothers were minor and therefore, financial position deteriorated to the maximum. Over and above that, after the death of the father of the petitioner, mother of the petitioner become lunatic As a result of this calamity, the petitioner as well as his brother both were admitted in Mahajan Anath Ashram Balashram at Surat. The petitioner stayed there for a period of about 12 years and even passed the S.S.C. Examination from the said Ashram. In respect of the conduct of the petitioner in the Ashram, certificate has been produced on record which was given by the Administrator of the Ashram. According to the petitioner, in the year 1985, the petitioner started correspondence with the respondents requesting them that he may be taken up as a police constable or for any other suitable post on compassionate ground. The respondent No.1 initially did entertained the prayer and request made by the petitioner to some extent but ultimately it has not been materialized. The present petition has been filed on the basis of the fact that the petitioner is entitled for compassionate appointment in Class III or Class IV as per the well known guidelines issued by the Government vide Circular No. BRT-1084-355-K dated 1st March, 1984. Copy of the said guidelines has also been produced on record by the petitioner. According to the petitioner, the first representation dated 10th September, 1985 was tendered to respondent No. 2 and the

same was acknowledged and reply was given on 7th October, 1985 that the relevant papers have been transferred to the office of the first respondent and the petitioner was further directed to keep in touch with the first respondent. The petitioner, thereafter, started correspondence with the first respondent. The petitioner had received one letter on 30th October, 1985. Thereafter, series of representations were submitted to the first and second respondent between 30th October, 1985 to 7th November, 1986. All the replies received by the petitioner have been produced on record. According to the petitioner, one letter was addressed by respondent NO.2 to respondent no.1 in which letter dated 7th November, 1986, the respondent no.2 has categorically mentioned that taking into consideration the pension as well as the amount of gratuity and the GPF, it is fit case in which the petitioner should be given appointment on compassionate grounds. Thereafter, the petitioner was instructed by letter dated 8th March, 1989 written by the first respondent no.1 to submit original copies of relevant certificates like death certificate of the petitioner's father etc. The respondent has sent three forms with an instruction to the petitioner to fill up those forms. The petitioner obeyed the said instructions. Thereafter, by letter dated 17th March, 1989 written by the first respondent, the petitioner was intimated to remain present in the office of the first respondent for medical check up and according to the petitioner, the petitioner did undergo the physical test also. According to the petitioner, thereafter, the petitioner went on making representation but of no avail and he and his family are in dire straits and the brother of the petitioner has also recently suffered from acute mental depression ultimately resulting into insanity. Even the mother of the petitioner is also in the same situation since many years and lot of expenses has been incurred in treatment and according to the petitioner, he is badly in need of appointment on compassionate grounds. The petitioner has also pointed out that it is not within the scope of the respondents exercising discretion but in fact, it is the right of the petitioner which is crystallized upon the petitioner on his attaining the majority. However, the respondents have failed in this case to offer compassionate appointment to none of the members of the petitioner's family on the death of the father of the petitioner. Therefore, the petitioner has prayed in this petition to direct the respondent authorities to give appointment to the petitioner on compassionate grounds on the post of police constable or any other suitable post as the petitioner's educational qualification permits such appointment. Learned advocate

Mr. Pardiwala has submitted that the petitioner has received one letter dated 22nd November, 1988 which is the reply to the application of the petitioner in respect of his claim for appointment on compassionate grounds. In the said reply given by the Deputy Administrative Officer of the first respondent, it is mentioned that the father of the petitioner died on 10th April, 1969 and the Scheme was introduced by the State Government for compassionate employment in October, 1975 and, therefore, the petitioner is not entitled for compassionate appointment because the scheme was introduced in October, 1975 when his father has already died on 10th April, 1969 and, therefore, all the relevant papers were sent back to the petitioner alongwith the said letter.

Though rule has been served upon the respondents, nobody has remained present on behalf of the respondents. Not only that but the respondents have also not chosen to file any affidavit in reply to controvert the averments made by the petitioner in the present petition. Therefore, I have heard the learned advocate Mr. J. B. Pardiwala for the petitioner.

Mr. Pardiwala has relied upon the Govt. Circular dated 1st March, 1984 wherein it is been provided for giving of appointment on compassionate grounds when a Government servant dies in service and if his family is left in indigent circumstances. Mr. Pardiwala has pointed out from the scheme that the compassionate appointment of the dependents of the deceased government servant and the project affected persons should be made only in class III or Class IV or the lowest range in class III post in the departments. He also relied upon the relevant paragraph of the scheme that there should be no objection in relaxing the age limit for recruitment in such cases. However, the relaxation in the upper age may not exceed 30 years, beyond that, prescribed in the recruitment rules for the post or age of 45 years whichever is lesser. If the relaxation is required to be made even in the minimum age limit, such relaxation may be considered if it does not exceed the period of one year below age limit prescribed in the recruitment rules for the post. No relaxation in the educational qualification should be allowed in compassionate employment. However, when some minimum experience is prescribed or alongwith certain minimum educational qualification, it may be relaxed. Even in case of minimum marks in the SSC Examination, which might be stipulated by the authority, but it can be relaxed in the case of compassionate employment. It should be established that the family should be in real indigent

circumstances and for ascertain such circumstances, amount of monthly income of such family all concerned and irrespective of number of dependents should be not more than 400 rupees per month. This limit has been enhanced by the Government to Rs.600.00 per month with effect from May,1983. It is also made clear that not more than one person in the family of the deceased Government servant should be given such compassionate appointment. Such person should be son, daughter, wife or husband of the deceased Government servant. In case of extreme hardship requiring immediate help, Secretaries to the Government in the Administration Department will be competent to appoint provisionally pending selection through the procedure prescribed. There should be no unduly long time between the death of the Government servant and the appointment on compassionate grounds. Such compassionate appointment will be permissible within five years after occurrence of death of the Government servant. However, in exceptional cases, in case of a Government servant at the time of his death leaving behind him illiterate widowed wife and minor children, none of whom can be offered employment on compassionate ground, in such cases, period of five years may be relaxed with the concurrence of the General Administration Department. Learned advocate Mr. Pardiwala has submitted that according to the said scheme, the case of the petitioner was considered and it was recommended by the Deputy Director of the first respondent by letter dated 7th November, 1986 after considering the income of the family pension, gratuity, provident fund and the life insurance policy. He has also submitted that even the medical checkup of the petitioner has been completed and the petitioner had undergone such medical test and yet the appointment on compassionate ground has not been offered to the petitioner. He has further submitted that the reply dated 22nd November, 1988 wherein the petitioner's claim has been rejected only on the ground that the scheme was introduced with effect from October, 1975 whereas his father died on 10th April, 1969 and, therefore, the petitioner is not entitled for the benefit of the said scheme for appointment on compassionate ground. According to him, at the time of death of his father, the petitioner was minor and he became major after 1975; he passed his SSC Examination after staying in the Mahajan Anath Bala Ashram at Surat and, therefore, according to him, the petitioner is entitled to the benefit of the scheme introduced in October, 1975 for appointment on compassionate grounds because he attained majority after 1975 and, thereafter, he has become entitled to the benefit of appointment on compassionate ground and, therefore, the decision which has been taken

by the respondent no.1 is illegal, unreasonable, arbitrary and irrational.

Learned advocate Mr. Pardiwala has relied upon two decisions of this Court in case of Nisar Ahmed A. Miya versus State of Gujarat and others reported in 1995 (2) GLH 546. In the said decision, this Court (Coram:Rajesh Balia,J.) has considered the very question of compassionate appointment and has observed that there should be no delay in such appointment on compassionate ground. It has also been observed that if such appointments are delayed for indefinite period on the specious ground of administrative exigencies, the very purpose of such policy will fail. In the said decision, this Court has considered the decision of the apex court in case of Smt. Sushma Gosain and Others versus Union of India and Ors. reported in AIR 1989 SC 1976 wherein the apex court has observed as under:

"We consider that it must be stated unequivocally that in all claims for appointments on compassionate grounds, there should not be any delay in appointment. The purpose of providing appointment on compassionate ground is to mitigate the hardship due to death of the bread earner in the family. Such appointment should, therefore, be provided immediately to redeem the family in distress. It is improper to keep such case pending for years. If there is no suitable post for appointment supernumerary post should be created to accommodate the applicant."

After considering the decision of the apex court, this court has allowed the petition and has directed the respondents therein to appoint the petitioner Nisar Ahmed Abdul Miya on the post to which he has been found eligible to the appointment within one month from the date of receipt of that order.

He has also relied upon the decision of this court in case of Jagdishbhai Amrutbhai Patel versus Divisional Controller reported in 1998 (1) GCD 306 (Guj). In the said decision, this court (Coram:M.R.Calla,J.) has considered the very question of compassionate appointment. Application of the petitioner has been rejected on the technical ground of delay. The petitioner was minor at the time of death of his father. The petitioner applied after passing S.S.C. Examination. There was delay of ten months. In the said decision, this court has made certain observations as under:

"The compassion in such cases is the very essence

by which the scheme of giving appointment has been introduced and if such cases are rejected with a computer machine application, oblivious of an orientation of compassion, the whole purpose of introducing such scheme would stand thwarted and defeated. Therefore, this Court being fully conscious with the proposition of law laid down in this regard by the Supreme Court that the procedure must be followed and the Court should not be swayed by sympathy, I find that the time limit of one year cannot be applied with that rigour to put an end to the consideration for appointment on compassionate ground in every case in which a ward of deceased employee fails to move application within time limit of one year fixed as a part and parcel of the procedure evolved by the employer not under any statutory rules but merely by way of executive instructions. Even when there are provisions of law consideration is made as to whether the provision is mandatory or directory. Here is a case in which there is no statutory rule, what to talk of mandatory or directory rule, and, therefore, such a time limit fixed as a part of the procedure through executive instructions adopted by the Corporation cannot be a fate accompli for all times to come against the ward of deceased employee who seeks appointment on compassionate ground at the very threshold of his career immediately after passing SSC Examination and the fact remains that at the time when he attained majority, he was a student. The decision of the Corporation to outrightly reject the petitioner's application seeking appointment on compassionate grounds in the facts of the present case cannot be held to be justified."

Learned advocate Mr. Pardiwala has also relied upon the decision of the apex court in case of Smt. T.K. Meenakshi and another versus Steel Authority of India Ltd. and others reported in 2000 AIR SCW 1745. In the said decision, the apex court has considered the question of compassionate appointment. Said decision of the apex court is also on the question of giving benefit of compassionate appointment. The apex court has considered the sudden jerk in the family by reason of the death of the bread earner. It has been observed that such sudden jerk can only be absorbed by some lump sum amount being made available to the family. This is rather unfortunate but this is a reality. The feeling of security drops to

zero on the death of the bread earner and insecurity thereafter reigns and it is at that juncture if some lump sum amount is made available with a compassionate appointment, the grief stricken family may find some solace to the mental agony and manage its affairs in the normal course of events. It is not that monetary benefit would be the replacement of the bread earner but that would undoubtedly bring some solace to the situation. In paragraph 17 of the judgment, it has been observed by the court as under:

"Moreover, compassionate appointment cannot be refused since the Tripartite Agreement expressly preserves the earlier circular to the effect that any benefit conferred by the earlier circular shall continue to be effective and the earlier rules as a matter of fact were not prohibitive of such compassionate appointments but lend affirmation to such appointments. "

In para 8 and 9 of the judgment, it has also been observed as under:

"8. The employer being Steel Authority of India, admittedly, an authority within the meaning of Article 12 has thus an obligation to act in terms of the avowed objective of social and economic justice as enshrined in the Constitution but has the authority in the facts of the matters under the consideration acted like a model and ideal employer- It is in this factual backdrop, the issue needs an answer as to whether we have been able to obtain the benefit of constitutional philosophy of social and economic justice or not. Have the lofty ideals which the founding fathers placed before us any effect in our daily life- the answer cannot however but be in the negative- what happens to the constitutional philosophy as is available in the Constitution itself, which we ourselves have so fondly conferred on to ourselves. The socialistic pattern of society as envisaged in the Constitution has to be attributed its full meaning. A person dies while taking the wife to a hospital and the cry of the lady for bare subsistence would go unheeded on certain technicality. The bread earner is no longer available and prayer for compassionate appointment would be denied as it is likely to open a Pandora's box. This is the resultant effect of our entry into the new millennium. Can

the law courts be a mute spectator in the matter of denial of such a relief to the horrendous sufferings of an employee's family by reason of the death of the bread earner. It is in this context this court's observations in Dharwad Dist PWD Literate Daily Wage Employees Assn. v. State of Karnataka [1990] 2 SCC 396:[AIR 1990 SC 883:1990 Lab IC 625) seem to be rather apposite. This Court upon consideration of Randhir Singh v. Union of India (daily rated casual labour employed under P & T Department through Bharatiya Dak Tar Mazdoor Manch v. Union of India (1988) / SCC 122:(AIR 1987 SC 2342 : 1988 Lab IC 37) as also SURinder Singh v. Engineer in chief (1986) 1 SCC 639:(AIR 1986 SC 584:1986 Lab IC 35) and DS Nakara v. Union of India (1983) 1 SCC 305:(AIR 1983 SC 130:1983 Lab IC 1) observed in paragraph 14 and 15 as below:

'14. We would like to point out that the philosophy of this court as evolved in the cases we have referred to above is not that of the court but is ingrained in the Constitution as one of the basic aspects and if there was any doubt on this there is no room for that after the Preamble has been amended and the Forty second Amendment has declared the Republic to be a socialistic one. The judgments, therefore, do nothing more than highlight one aspect of the constitutional philosophy and make an attempt to give the philosophy a reality of flesh and blood.

15. Jawaharlal Nehru, the first Prime Minister of this Republic, while dreaming of elevating the lot of the common man of this country once stated:

'Our final aim can only be a classless society with equal economic justice and opportunity to all, a society organized on a planned basis for the raising of man kind to higher material and cultural levels. Everything that comes in the way will have to be removed gently, if possible, forcibly if necessary, and there seems to be little doubt that

coercion will often be
necessary.'

These were his prophetic words about
three decades back. More than a quarter
of century has run our since he left us
but there has yet been no percolation in
adequate dose of the benefits the
constitutional philosophy stands for to
the lower strata of society. Tolstoy
wrote:

'The abolition of slavery has
gone on for a long time. Rome
abolished slavery. America
abolished it and we did but only
the words were abolished, not the
thing.'

Perhaps what Tolstoy wrote about
abolition of slavery in a large sense
applies to what we have done to the
constitutional ethos. It has still
remained on paper and is contained in the
book. The benefits have not yet reached
the common man. What Swami Vivekananda
wrote in a different context may perhaps
help a quicker implementation of the goal
to bring about the overdue changes for
transforming India in a positive way and
for transforming India in a positive way
and in fulfilling the dreams of the
Constitution fathers. These were the
words of the Swami:

'It is imperative that all this
various various yogas should be
carried out in practice. Mere
theories about them will not do
any good. First we have to hear
about them, then we have to think
about them. We have to reason
the thoughts out, impress them on
our minds and meditate on them;
realise them, until at last they
become our whole life. No longer
will religion remain a bundle of
ideas or theories or an
intellectual assent; it will
enter into our very self. By
means of an intellectual assent,

we may today subscribe to many foolish things, and change our minds altogether tomorrow. But true religion is realisation; not talk, nor doctrine, nor theories, however beautiful they may be. It is being and becoming nor hearing or acknowledging. It is the whole soul's becoming changes into what it believe. That is religion.'

9. As a matter of fact, the constitutional philosophy should be allowed to become a part of every man's life in this country and then only the Constitution can reach every one and the ideals of the Constitutional framers would be achieved since the people would be nearer the goal set by the Constitution- an ideal situation but a far cry presently. "

I have considered three decisions amongst two of this court and one of the apex court. I have also considered the factual position of the matter that the petitioner was, at the time of death of his father, minor and his mother had become lunatic as well as his brother has also become mentally depressed and, thereafter, both the brothers had stayed in the Anath Ashram and from there, the petitioner had passed his SSC Examination. His application for compassionate appointment has been rejected on the sole technical ground that at the time of death of the father of the petitioner, the scheme for compassionate appointment was not introduced by the respondent but the same was introduced by the respondent with effect from October, 1975. While rejecting his application for compassionate appointment, the respondent has ignored an important aspect that at the time of death of his father, the petitioner and his brother were minor in the year 1969 and on account of his father's death, his mother had become lunatic. The respondents had not appreciated that the petitioner had become major after 1975 and at that time, on account of introduction of the policy, right to compassionate appointment has arisen. Application of the petitioner for compassionate appointment was considered by the respondents upto the level of medical examination after verifying the records and certificates, income and other necessary details. Even the medical check up was also over as per the letter dated 13th March, 1989 but decision was taken by letter

dated 22nd November, 1988 that the petitioner's case cannot be considered for such appointment because at the time of death of his father, scheme for compassionate appointment was not introduced by the respondents. It is pertinent to note that the said letter is dated 22.11.1988. But taking into consideration subsequent event i.e. medical check up which was over as per letter dated 13th March, 1989. Therefore, said letter dated 22.11.1988 have no consequence in view of subsequent event of 1989. Unfortunately, in this matter, the respondent has not taken any care to file the affidavit in reply against the petition. Not only that but no care has been taken see that the respondents are represented to assist this Court in such a peculiar case in the administration of justice. After his medical check up in the year 1989, till this date, nothing has been heard from the respondents as to what has happened with his application for compassionate appointment. It is a sorry state of affairs that a man has remained unemployed since long from 1989 till this date. Therefore, according to my view, the petitioner is entitled to compassionate appointment as per the policy of the respondents produced at Annexure "C" dated 1st March, 1984. There is nothing on record to show that any adverse orders were passed as regards petitioner's compassionate employment after the letter dated 13.3.1989. In view of these facts and circumstances of the case, the petitioner is entitled to compassionate appointment and it is the duty of the respondents to take further steps immediately to offer compassionate appointment to the petitioner after the result of the medical check up of the petitioner.

Therefore, taking into consideration all the facts and circumstances of the case and the decision of this court as well as of the apex court, the petitioner is entitled to compassionate appointment. Therefore, following order is passed.

The petition is allowed and the respondent or they delegate in that regard are directed to appoint the petitioner Shri Arvindkumar N. Bhatt on the post to which he has been found eligible to the appointment within a period of one month from the date of receipt of certified copy of this order. Rule is made absolute accordingly. In view of the peculiar facts and circumstances of the present case, the petitioner is entitled to costs of this petition which is quantified at Rs.2,000/- (Rs. two thousand only) and the same shall be paid to the petitioner alongwith the appointment order.

11.8.2000. (H.K. Rathod,J.)

Vyas